UNITED STATES
v.
WILLIAM M. GOODPASTER

IBLA 73-322 Decided October 25, 1973

Appeal from decision (Alaska AA-6036) by Administrative Law Judge L. K. Luoma, declaring mining claims null and void.

Affirmed.

Mining Claims: Discovery: Generally

Where minerals have been found and the evidence is of such a character that a person of ordinary prudence would not be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine, a discovery does not exist within the meaning of the mining laws.

Rules of Practice: Appeals: Burden of Proof ! ! Contests and Protest: Generally

Where the Government has made a prima facie showing of a lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimant.

Mining Claims: Contests ! ! Mining Claims: Discovery: Generally

Government mineral examiners have no affirmative duty to search for indications of a discovery on a mining claim; nor do they have a duty to go beyond

> examining the discovery points of a claimant. Their function is to examine the discovery points made available by a claimant and to verify, if possible, the claimed discovery.

APPEARANCES: William M. Goodpaster, Indian Creek, Rural Station, Alaska, pro se; Albert R. Wall, Esq., Office of the General Counsel, United States Department of Agriculture, Portland, Oregon, for appellee.

OPINION BY MR. FISHMAN

William M. Goodpaster has appealed from a decision by Administrative Law Judge L. K. Luoma, dated February 26, 1973, declaring ten placer mining claims null and void. 1/ Appellant argues that the decision should be reversed because the Forest Service failed to produce sufficient evidence of its allegations and did not sufficiently examine the claims.

The contest was initiated on December 3, 1971, at the request of the Forest Service. 2/ The complaint charged in part that minerals had not been found within the limits of the claims in sufficient quantities to constitute a discovery within the meaning of the mining laws.

A mining claim, unsupported by a discovery of a valuable mineral deposit, is null and void. A discovery exists "where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine * * *." Castle v. Womble, 19 L.D. 455, 457 (1894); see United States v. Coleman, 390 U.S. 599 (1968).

To establish a prima facie case, the Forest Service offered into evidence without objection a decision, United States v. Goodpaster, Alaska Contest No. 050732 ! (B) (August 24, 1962), in which the surface

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1/ The claims were located on Six Mile Creek within the Chugach National Forest, Alaska, and are referred to as the Walker, Lucky Strike, Blue Moon, Esperanto, Fourth of July, big Rock, Boston Bar, Big Slide, Gold Bar and Luna Placer Claims.

2/ The complaint was served on Miriam Patti Lindamood and Virginia E. Regna as well as William M. Goodpaster. Contestees are the heirs of Herman A. Goodpaster, who held the mining claims before his death.

rights of the same claims in issue here were restricted under the Act of July 23, 1955, as amended, 30 U.S.C. § 613 (1970), popularly referred to as the Surface Resources Act. In addition, Henry Jones, a mining engineer employed by the Forest Service, testified that he made an appointment to examine the claims with appellant on July 6, 1969, but that appellant was not present at the claims on that date. Jones examined the claims but found no evidence of additional work having been done since the claims were originally sampled for the hearing in United States v. Goodpaster, supra, except for a small cut and a sluice box near a cabin on the Blue Moon mining claim. He further testified that the sluice box was removed sometime after 1969, and that the ground was leveled off. He took pan samples from the Blue Moon and the Esperanto claims, but only obtained very fine colors of gold which in his opinion were so small that they could not be weighed. Based upon his examination of the claims, Jones testified that a prudent man would not be justified in expending his time and efforts in the expectation in developing a paying mine on any of the mining claims in issue.

Appellant testified that he worked the claims and found gold. He did not submit any assay reports, but offered into evidence the affidavits of four persons each of whom professed to have participated in prospecting, and some mining, on five or six of the claims. Each affiant stated his estimate of the gold value for the claims upon which he worked. The values ranged from $ .50 to $ 2.50 per cubic yard. The values were estimated on the basis that gold was worth $ 35 an ounce.

On cross!examination, appellant testified that neither he nor the affiants ever made any money mining the claims. He stated that he recovered about six ounces of gold from the claims from 1969 to 1971. He further testified that the arrangement he had with the affiants was to share the gold recovered equally, so that the affiants probably retained about the same amount of gold as he had. He estimated that he and the affiants probably spent a hundred hours per year per man to recover the gold.

The evidence submitted by the Forest Service was sufficient to establish a prima facie case. The Judge properly took official notice of the prior contest proceedings in United States v. Goodpaster, supra. 43 CFR 4.24(b); United States v. Trussel, 7 IBLA 225 (1972). The only issue in those proceedings was whether a discovery of a valuable mineral deposit within the limits of each claim was demonstrated under the mining laws. The issue in the earlier Goodpaster proceedings was decided in the negative and the decision was not appealed. The issue in the case at bar is identical, and the admission into evidence of the decision in the prior proceedings established

the lack of a discovery on each of the claims as of the time of those proceedings. As stated in Arthur L. Rankin, 73 I.D. 305, 313 (1966):

> The record established at such a hearing [proceedings under section 5 of the Surface Resources Act] becomes part of the official records of this Department. Therefore, it may well serve to provide a basis for further action against a claim, and, in any subsequent hearing, the transcript of testimony and exhibits, with the decision may be introduced as evidence of the facts to be proved. Of course, evidence to rebut such evidence would have to be considered if presented at the subsequent hearing.

The testimony of the government mineral examiner was sufficient to establish a prima facie case of no discovery as of the time of the hearing. Appellant argues that the Forest Service has "not done enough examining of [his] claims to reasonably evaluate even a small portion of one claim." He also asserts that it is not "fair and reasonable to declare any claims null and void because a few pans of gravel have shown only a small amount of gold * * * taken from areas * * * not designated by [him]."

Appellant misconstrues his burden of proof. Where, as in the case at bar, the Government has made a prima facie showing of a lack of discovery, the burden of producing preponderating evidence of a discovery of a valuable mineral deposit is upon the contestee. Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959). While appellant is dissatisfied with the extent of the sampling performed by the mineral examiner, appellant failed to designate his discovery points at the time of the examination. Government mineral examiners have no affirmative duty to search for indications of a discovery on a mining claim; nor do they have a duty to go beyond examining the discovery points of a claimant. Their function is to examine the discovery points made available by a claimant, and to verify, if possible, the claimed discovery. United States v. Humboldt Placer Mining Co., 8 IBLA 407, 79 I.D. 709 (1972).

Appellant requests that this Board order a temporary stay of these proceedings until he can make a joint examination of the claims with the Forest Service.

Appellant's request for a stay of proceedings is denied. At the close of the hearing on July 24, 1972, the parties agreed to a joint sampling to be conducted in September of 1972. The Judge directed appellant to indicate his discovery points to the

Forest Service. Following the hearing several attempts were made by the Forest Service to perform the joint sampling, but appellant never made himself available. He asserts that he was not able to carry out the joint examination because he was called back to work and unable to spend enough time at the claims. He is a sheet metal worker by trade.

In our view appellant was given a fair opportunity to participate in a joint sampling of the claims. He agreed at the hearing to conduct the examination in September of 1972. On August 1, 1972, appellant again agreed with Wesley Moulton, a mining engineer employed by the Forest Service, to conduct the examination in late September. Appellant's choice to return to work and his failure to make any alternative arrangements with the Forest Service constitutes a sufficient basis upon which to deny his request for a stay.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Member

We concur:

Douglas E. Henriques
Member

Anne Poindexter Lewis
Member